IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PTN UNDER CHRISTIAN MARRIAGE ACT. No 7 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEENA ABRAHAM

Versus

RAJI EAPPEN

Appearance:

MR JOY MATHEW for Petitioner

MR VIKRAM J THAKOR for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 12/09/2000

ORAL JUDGEMENT

1. This is a Christian Marriage Petition filed by the petitioner wife under sec. 18 & 19 of the Indian

Divorce Act for declaring the marriage between the petitioner and the respondent held on 13.11.1995 at Vadodara as null and void.

2. The petitioner-wife Neena Abraham has filed this petition for the aforesaid relief on the ground that her consent for marriage was obtained under a fraud and misrepresentation by the respondent husband Raji Eappen by concealing important social, educational and religious aspect. Before going to the merits of the petition, I would like to mention that the averments made in the petition are not substantially challenged or controverted by the respondent husband by leading oral as well as documentary evidence.

3. On 30.8.2000, when this matter was called out, after hearing learned advocates appearing for the parties, their suggestions on the issues and considering the rival contentions in the pleadings, this Court (Coram : P.B.Majmudar, J), vide order dated 30.8.2000, framed following issues :-

(A) Whether the respondent was lunatic at the time of marriage and whether he continued tobe so at the time of filing of this petition ?

(B) Whether consent of the petitioner was obtained by fraud, misrepresentation and non-disclosure of material fact at the time of her marriage with the respondent?

(C) What order ?

4. It is contended by the petitioner that the parties are Christians by birth and belonging to Marthoma community. Their marriage was solemnised on 13.11.1995 at Makarpura Church, Vadodara in accordance with the religious rites of Christians. Marriage was arranged as both the spouses were introduced and met through a matrimonial advertisement published in "Times of India", Ahmedabad Edition. It was stated in the advertisement that the respondent husband is residing at Jabalpur (M.P.), the petitioner wife responded to the advertisement and accepted the stated facts as to the status, educational qualifications etc. of the respondent husband disclosed before her. However, after marriage, petitioner wife realised that the respondent husband had concealed following important facts from her:-

(i) That the parents of the respondent husband and other family members are not

practising Marthoma, but they belong to another denomination known as "Pentecostals".

(ii) Educational qualification was also suppressed. The petitioner is Post Graduate in the faculty of Commerce and respondent husband was only a B.Com.

(iii) That the petitioner was told that the respondent husband was working as Station Manager in Jabalpur, but in fact, he was working as Assistant Station Master in a remote village in Jabalpur District.

5. Parties have agreed to lead evidence by affidavits. The facts averred in the petition are stated on oath in the affidavit filed by the petitioner today which is taken on record. Surprisingly, the respondent husband has not cross-examined the deponent - petitioner, nor has filed any counter affidavit. Learned counsel Mr. Thakor appearing for the respondent husband has filed a pursis stating that the respondent husband does not want to cross-examine the petitioner. Respondent husband has not even cared to ask the petitioner to enter into the witness box for cross-examination. Thus, as stated, there is no contrary evidence on record qua the averments made in the petition as well as affidavit filed by the petitioner. Hence, the averments made have remained uncontroverted.

6. Learned counsel appearing for the petitioner wife has fairly submitted that rest of the allegations made by the petitioner are not substantiated by any cogent oral as well as documentary evidence and, therefore, he is not pressing the decree on the grounds reflected in issue no.(A) framed by this Court. He, however, submitted that this petition can be decreed as prayed for on the grounds reflected in issue no.(B). In view of this fair submission, issue no.(A) is answered in the negative for want of evidence on record.

7. As stated earlier, no oral as well as documentary evidence is adduced by the respondent husband to controvert the averments made by the petitioner. The averments made have remained uncontroverted. Thus, the averments made by the petitioner wife regarding fraud, misrepresentation and non-disclosure of true facts are established by the petitioner wife more particularly when the respondent husband has not cared to controvert the

same by filing counter affidavit or leading any evidence.It is submitted and proved that ordinarily, no Marthoma would marry a person belonging to a family practising Pentecostal. Family members of the respondent husband including his brothers are practising Pentecostal. Thus, it is established that the consent of the petitioner wife for marriage was obtained under misrepresentation and non-disclosure of true facts. Since, both the families were unknown to each other and came in to contact for the first time through matrimonial advertisement published in Times of India, respondent husband must have easily defrauded the petitioner wife.

8. In response to the query raised by this Court, learned counsel appearing for the petitioner has cited one decision in the case of Saly Joseph v/s Baby Thomas, reported in AIR 1999 Kerala P.66 wherein it is held that the decree of annulment of marriage can be granted on proving by the wife that she was very particular about quality of person which was concealed from her and husband obtained her consent for marriage by exercising fraud by concealing educational qualifications. In the case before Kerala High Court, the petitioner wife had given evidence to the effect that if she was made to believe that the opponent husband has passed Pre-degree examination and two years Diploma Course in Air Conditioning and is employed as Air Condition Mechanic in the Government Service in Beharin. But in fact the husband was not having diploma in Air Conditioning and he had not even passed Pre-degree examination and his service at Beharin was of a salesman. Had she knew about this, she would not have given her consent for marriage. In my view, ratio of this judgment squarely applies to the facts of the present case. But for the fraud and representation as to the family background, educational qualifications and job by the respondent husband, the petitioner would not have consented for marriage and, therefore, she is entitled to the decree for annulment of marriage on the ground of fraud and misrepresentation. Normally, a post-graduate lady in commerce faculty staying in a city like Baroda, would not like to marry a person having less educational qualifications and serving in a remote village in Madhya Pradesh. I am told that petitioner wife now is having degree of M.B.A. A lady who intends to study further would not opt to go and stay at a remote place where there is no facilities to prosecute her further studies of M.B.A. which requires regular attendance in an Institution. It appears that her consent for marriage must have been obtained in a given hope that in the city like Jabalpur she would be able to prosecute her further studies. There is

sufficient legal evidence to show that as she was made to believe that respondent husband is staying/residing at Jabalpur and serving as a Station Manager in Railways. Under the circumstances, this is a fit case where decree as prayed for by the petitioner should be granted.

9. It is pertinent to note further that no economical or financial aspects are involved in the matter today as the relief qua the same has already been deleted on the previous date of hearing as not pressed. I am also satisfied that this is not a case of collusion between the parties.

10. In view of facts and circumstances as stated above, I answer Issue No.(A) in the negative and Issue No.(B) in the affirmative.

11. Accordingly, this petition is allowed. This Court, hereby declares that the marriage between petitioner wife Neena Abraham, R/o Vadodara AND Raji Eappen, R/o Jabalpur (Madhya Pradesh) solemnised on 13.11.1995 at Vadodara was null and void on the ground that the consent of the petitioner wife for marriage was not free consent and was obtained under fraud and misrepresentation. The decree of annulment of marriage is, therefore, granted and same should be drawn accordingly. Considering the facts and circumstances of the case, no order as to costs.

12.9.2000 [C.K. BUCH, J]
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